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Supreme Court, U.S.
FILED

No. 07-___

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In The

Supreme Court of the United States

WILLIAM TRANTHAM,

Petitioner,

v.

BRUCE ISAACKS,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeals Of The State Of Texas, Second District

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the First Amendment extends its protection in the political arena to attorneys and protects core political speech through the use of the Texas Uniform Declaratory Judgment Act.

2. Whether the court of appeals denied Trantham due process and erred by holding that sufficient evidence exists in this matter to support the required findings for any award of sanctions.

PARTIES TO THE PROCEEDING

All parties to the proceeding are named in the caption of the case as recited on the cover page. There are no nongovernmental corporate parties requiring a disclosure statement under Supreme Court Rule 29.6.

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PETITION FOR WRIT OF CERTIORARI

Petitioner William Trantham respectfully prays that a Writ of Certiorari issue to review the decision of the Texas Court of Appeals, Second District entered on January 25, 2007. The trial court record below will be referred to as the clerk's record (CR) and reporter's record (RR) with associated numerical volumes.

OPINIONS BELOW

The Fort Worth Court of Appeals issued its opinion in this case on January 25, 2007 with all justices concurring. A copy of that opinion is attached hereto as Appendix A. This opinion is reported at ___ S.W.3d ___, 2007 WL 174402 (Tex. App. – Fort Worth 2007). On March 1, 2007, the Court of Appeals issued an order denying a rehearing. A copy of that order is attached hereto as Appendix B. The order sanctioning Trantham, the basis of this appeal, is attached hereto as Appendix C. On May 25, 2007, the Texas Supreme Court refused discretionary review of the Court of Appeal's decision without opinion. A copy of that refusal is attached as Appendix D.

JURISDICTION

The Texas Supreme Court denied discretionary review on May 25, 2007. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1254(1), 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. Federal Constitutional Provisions

The First Amendment to the United States Constitution provides in relevant part:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S. CONST. amend. I.

The Fourteenth Amendment, Section 1 to the United States Constitution provides in pertinent part:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1.

B. State Constitutional Provisions

Texas Constitution, Article I, Section 8 provides:

> Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no

> law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers, investigating the conduct of officers, or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Texas Const., Art. I, § 8

> Texas Constitution, Article I, Section 19 provides:
>
> No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Texas Const., Art. I, § 19

C. State Statutory Provisions

Texas Civil Practice & Remedies Code § 10.001 provides:

> The signing of a pleading or motion as required by the Texas Rules of Civil Procedure constitutes a certificate by the signatory that to the signatory's best knowledge, information, and belief, formed after reasonable inquiry:
>
> (1) the pleading or motion is not being presented for any improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) each claim, defense, or other legal contention in the pleading or motion is warranted by

> existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) each allegation or other factual contention in the pleading or motion has evidentiary support or, for a specifically identified allegation or factual contention, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) each denial in the pleading or motion of a factual contention is warranted on the evidence or, for a specifically identified denial, is reasonably based on a lack of information or belief.

Tex. Civ. Prac. & Rem. Code Ann. § 10.001.

Texas Civil Practice & Remedies Code § 37.001 provides:

> In this chapter, "person" means an individual, partnership, joint-stock company, unincorporated association or society, or municipal or other corporation of any character.

Tex. Civ. Prac. & Rem. Code Ann. § 37.001.

Texas Civil Practice & Remedies Code § 37.002 provides:

> (a) This chapter may be cited as the Uniform Declaratory Judgments Act.
>
> (b) This chapter is remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and it is to be liberally construed and administered.

> (c) This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.

Tex. Civ. Prac. & Rem. Code Ann. § 37.002.

Texas Civil Practice & Remedies Code § 37.003 provides:

> (a) A court of record within its jurisdiction has power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. An action or proceeding is not open to objection on the ground that a declaratory judgment or decree is prayed for.
>
> (b) The declaration may be either affirmative or negative in form and effect, and the declaration has the force and effect of a final judgment or decree.
>
> (c) The enumerations in Sections 37.004 and 37.005 do not limit or restrict the exercise of the general powers conferred in this section in any proceeding in which declaratory relief is sought and a judgment or decree will terminate the controversy or remove an uncertainty.

Tex. Civ. Prac. & Rem. Code Ann. § 37.003.

Texas Civil Practice & Remedies Code § 37.004 provides:

> (a) A person interested under a deed, will, written contract, or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance,

> contract, or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.
>
> (b) A contract may be construed either before or after there has been a breach.

Tex. Civ. Prac. & Rem. Code Ann. § 37.004.

Texas Civil Practice & Remedies Code § 73.001 provides:

> A libel is a defamation expressed in written or other graphic form that tends to blacken the memory of the dead or that tends to injure a living person's reputation and thereby expose the person to public hatred, contempt or ridicule, or financial injury or to impeach any person's honesty, integrity, virtue, or reputation or to publish the natural defects of anyone and thereby expose the person to public hatred, ridicule, or financial injury.

Tex. Civ. Prac. & Rem. Code Ann. § 73.001.

Texas Civil Practice & Remedies Code § 73.002 provides:

> (a) The publication by a newspaper or other periodical of a matter covered by this section is privileged and is not a ground for a libel action. This privilege does not extend to the republication of a matter if it is proved that the matter was republished with actual malice after it had ceased to be of public concern.

(b) This section applies to:

(1) a fair, true, and impartial account of:

(A) a judicial proceeding, unless the court has prohibited publication of a matter because in its judgment the interests of justice demand that the matter not be published;

(B) an official proceeding, other than a judicial proceeding, to administer the law;

(C) an executive or legislative proceeding (including a proceeding of a legislative committee), a proceeding in or before a managing board of an educational or eleemosynary institution supported from the public revenue, of the governing body of a city or town, of a county commissioners court, and of a public school board or a report of or debate and statements made in any of those proceedings; or

(D) the proceedings of a public meeting dealing with a public purpose, including statements and discussion at the meeting or other matters of public concern occurring at the meeting; and

(2) reasonable and fair comment on or criticism of an official act of a public official or other matter of public concern published for general information.

Tex. Civ. Prac. & Rem. Code Ann. § 73.002.

Texas Civil Practice & Remedies Code § 73.003 provides:

> (a) To determine the extent and source of actual damages and to mitigate exemplary damages, the defendant in a libel action may give evidence of the following matters if they have been specially pleaded:
>
> > (1) all material facts and circumstances surrounding the claim for damages and defenses to the claim;
> >
> > (2) all facts and circumstances under which the libelous publication was made; and
> >
> > (3) any public apology, correction, or retraction of the libelous matter made and published by the defendant.
>
> (b) To mitigate exemplary damages, the defendant in a libel action may give evidence of the intention with which the libelous publication was made if the matter has been specially pleaded.

Tex. Civ. Prac. & Rem. Code Ann. § 73.003.

Texas Civil Practice & Remedies Code § 73.004 provides:

> (a) A broadcaster is not liable in damages for a defamatory statement published or uttered in or as a part of a radio or television broadcast by one other than the broadcaster unless the complaining party proves that the broadcaster failed to exercise due care to prevent the publication or utterance of the statement in the broadcast.

> (b) In this section, "broadcaster" means an owner, licensee, or operator of a radio or television station or network of stations and the agents and employees of the owner, licensee, or operator.

Tex. Civ. Prac. & Rem. Code Ann. § 73.004.

Texas Civil Practice & Remedies Code § 73.005 provides:

> The truth of the statement in the publication on which an action for libel is based is a defense to the action.

Tex. Civ. Prac. & Rem. Code Ann. § 73.005.

Texas Civil Practice & Remedies Code § 73.006 provides:

> This chapter does not affect the existence of common law, statutory law, or other defenses to libel.

Tex. Civ. Prac. & Rem. Code Ann. § 73.006.

STATEMENT OF THE CASE

Trantham filed a declaratory judgment action in an attempt to resolve the issues arising out of his past speech as Trantham sought to continue exercising his free speech rights regarding a political candidate, Bruce Isaacks. (CR 2; RR2 p 30 ln 23 – p 31 ln 16) Trantham filed suit under Texas Civil Practice & Remedies Code Chapter 37 for a declaration of his constitutional rights in light of Texas Civil Practice & Remedies Code Chapter 73. (CR 2) Isaacks filed a plea to the jurisdiction and general denial. (CR 15) On April 26, 2006, Trantham filed a nonsuit of his entire

case to allow the Texas Attorney General to review the matters the subject of declaratory judgment action. (CR 32) An order on the nonsuit was signed on April 27, 2006. (CR 34) On May 4, 2006, Isaacks filed a motion for sanctions. (CR 35) A hearing was held on May 25, 2006 on the motion for sanctions (RR2). Visiting Judge Ken Curry signed the order, the subject of this appeal, on May 26, 2006 sanctioning Trantham in the sum of $7,769.07. (Appendix C, CR 84)

This matter arose out of a demand by Isaacks, through his attorney, that Trantham curtail his free speech during the time period of an ongoing election proceeding for Isaacks who was running as an incumbent for public office – the Denton County Criminal District Attorney position. (CR 2, Exhibit C) Despite the lack of evidence offered or admitted by Isaacks and the evidence offered and admitted by Trantham, contrary to the requirements of Texas Civil Practice & Remedies Code § 10.001 and the relief sought by Isaacks, the trial court found in favor of Isaacks and sanctioned Trantham despite the assertion of Trantham's rights guaranteed by the First and Fourteenth Amendments of the United States Constitution and Article 1 of the Texas Constitution.

Isaacks presented no evidence at the hearing regarding any of the necessary elements of Texas Civil Practice & Remedies Code § 10.001. (RR2 p 6 ln 13 – p 19 ln 5) A request was made at the conclusion of Isaacks' case in chief for an order denying sanctions, pursuant to no evidence being presented, that request being denied. (RR2 p 17 ln 22 – p 18 ln 5) At the request of Trantham, the trial court took judicial notice of Texas Penal Code § 36.02, 18 U.S.C. § 666, Texas Constitution Article 3, Section 52; Article 16, Section 6; Article 1, Section 8, Texas Civil Practices & Remedies Code, Chapter 134 and Texas Civil Practices &

Remedies Code, Chapter 73. (RR2 p 19 ln 6 – p 20 ln 9) Trantham also offered the testimony of Plaintiff and Jamie Beck Gurley. (RR2 p 19 ln 17 – p 43 ln 8) Despite the complete lack of evidence in support of Isaacks' motion and the evidence admitted by Trantham in direct opposition to the requirements of Texas Civil Practice & Remedies Code § 10.001, the trial court found in favor of Isaacks and sanctioned Trantham.

This Fort Worth Court of Appeals in its January 25, 2007 opinion, in addressing the issue of the extension or modification of existing law or the establishment of new law, failed entirely to address the issue of the extension of the use of a declaratory judgment action involving core political speech choosing instead to focus on the use of a declaratory judgment action in a tort context. (Appendix A, 10a) At no point did the Fort Worth Court of Appeals address the issue of the extension of the use of a declaratory judgment action to determine the liabilities of the parties pursuant to Chapter 73 of the Texas Civil Practice and Remedies Code which clearly applies. *See* Tex. Civ. Prac. & Rem. Code Ann. § 37.004(a) (Vernon's 2005). Trantham requested the Fort Worth Court of Appeals rehear the matter as none of the cases cited in support of the opinion involve the civil statutes involved in Chapter 73. (Appendix Z, 10a; *Morales* – penal code; *Averitt* – professional negligence) The Fort Worth Court of Appeals addressed this legal protection argument in a conclusory fashion. (Appendix A, 10a)

REASONS FOR GRANTING THE WRIT

It is Trantham's position that this is a case of first impression regarding the assertion of core political speech rights by use of a declaratory judgment action. This argument was advanced to the trial court along with the invited comment issue. (RR2 p 47 ln 11 – p 49 ln 12) *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 346-47, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995) (speech designed to influence voters in an election is core political speech), *State v. Doe*, 61 S.W.3d 99, 102 (Tex. App. – Dallas 2001), aff'd 112 S.W.3d 532 (Tex. Crim. App. 2003), *Smith v. Holley*, 827 S.W.2d 433, 437 (Tex. App. – San Antonio, writ denied). The constitutional guarantee of free speech "has its fullest and most urgent application precisely to the conduct of campaigns for political office." *McIntyre*, 514 U.S. at 347. U.S. CONST. amends. I, XIV, § 1; Texas Const., Art. I, § 8; Tex. Civ. Prac. & Rem. Code Ann. §§ 73.001, 73.002(b)(2), 73.005.

In relying on this Court's opinion in *McIntyre*, Texas courts have stated –

> The court's analysis is equally applicable to all political speech, regardless of its focus. Indeed, while the state's interests may be heightened in a candidate election, so are a speaker's. The constitutional guarantee of free speech "has its fullest and most urgent application precisely to the conduct of campaigns for political office." *McIntyre*, 514 U.S. at 347, 115 S.Ct. 1511. The need to promote full and fair discussion is critical to the election of public officials where, as contrasted with votes on public measures, all the pertinent information may not be freely available.

See State v. Doe, 61 S.W.3d 99, 106 (Tex. App. – Dallas 2001), aff'd 112 S.W.3d 532 (Tex. Crim. App. 2003). In fact, the zenith of the application of free speech rights is in the election context.

> Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order "to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth v. United States*, 354 U.S. 476, 484, 77 S.Ct. 1304, 1308, 1 L.Ed.2d 1498 (1957). Although First Amendment protections are not confined to "the exposition of ideas," *Winters v. New York*, 333 U.S. 507, 510, 68 S.Ct. 665, 667, 92 L.Ed. 840 (1948), "there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. . . . of course includ(ing) discussions of candidates . . . " *Mills v. Alabama*, 384 U.S. 214, 218, 86 S.Ct. 1434, 1437, 16 L.Ed.2d 484 (1966). This no more than reflects our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open," *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S.Ct. 710, 721, 11 L.Ed.2d 686 (1964). In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation. As the Court observed in *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272, 91 S.Ct. 621, 625, 28 L.Ed.2d 35 (1971), "it can hardly be doubted that the constitutional guarantee has its

> fullest and most urgent application precisely to the conduct of campaigns for political office."

Buckley v. Valeo, 424 U.S. 1, 14-15, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). As a result of the foregoing, a person's right to speak freely about a political candidate is the most protected by both the United States and Texas Constitutions.

It is uncontroverted that Isaacks invited the comment of Trantham through use of a campaign mailer and that part of the relief requested in this matter was a declaration to that effect. (RR2 p 25 ln 11 – 14, p 30 ln 25 – p 31 ln 12, CR 2 [paragraphs V, VI and prayer]) It was also uncontroverted that Trantham valued his free speech in light of the invitation by Isaacks to comment which is protected by the United States and Texas Constitutions. U.S. CONST. amends. I, XIV, § 1; Tex. Const., Art. I, § 8. The trial court ignored these assertions and failed to find that the declaratory judgment action was a viable method by which Trantham could seek protection of his core political speech rights. The court of appeals erred by not allowing an aggrieved party the ability to, prior to the expiration of the time available to comment, a vehicle (the Uniform Declaratory Judgment Act) to protect their constitutionally protected right of free speech in the limited arena of the electoral process.

Without a procedural vehicle in place such as a declaratory judgment action, any person running for office may threaten any opposition (fellow candidate or otherwise) with the filing of a lawsuit thereby placing that citizen in the position of either subjecting themselves to a lawsuit or foregoing their constitutionally protected free speech regarding that candidate.

Certioriari should be granted to consider the use of a declaratory judgment, as in this case, being a proper method to protect one's free speech rights in a timely fashion during the election process in order to prevent an unconstitutional chilling of speech in that process.

A full and fair trial on the merits is required by the Due Process Clause of the Fourteenth Amendment. *Lindsey v. Normet*, 405 U.S. 56, 77, 92 S.Ct. 862, 876, 31 L.Ed.2d 36 (1972) This court previously ruled in *Thompson v. City of Louisville*, 362 U.S. 199, 80 S.Ct. 624, 4 L.Ed.2d 654, 80 A.L.R.2d 1355 (1960) that it is a denial of due process for a state to convict where there is no evidence of guilt. Isaacks offered no evidence at the trial of this matter other than an objected to hearsay affidavit regarding attorney's fees. (RR2 p 14 ln 11 – p 15 ln 17) Despite the trial court's erroneous ruling regarding the affidavit, there was no proof offered by Isaacks to support the necessary findings under § 10.001 of the Texas Civil Practice & Remedies Code. (RR2 in toto)

As a result of the lack of evidence in this matter, the trial court was without authority to enter the order attached as Appendix C hereto. To enter such an order, without any evidence to support same violates Trantham's rights to due process guaranteed by the Due Process Clause of the United States Constitution and the Texas Constitution. U.S. CONST. amend. XIV, § 1; Texas Const., Art. I, § 19. The Fort Worth Court of Appeals failed in finding that evidence existed when none had been offered or admitted regarding the necessary elements of § 10.001.

Certioriari should be granted to consider and review the improper holding of the Court of Appeals that evidence existed when none was offered, admitted or was in existence

as that holding continues the deprivation of Trantham's due process rights initiated by the trail court.

CONCLUSION

Certiorari should be granted to allow a review of the decision of the court of appeals (1) because a concerned citizen should be able to utilize a declaratory judgment to enable a declaration by a court of competent jurisdiction of his/her protected free speech rights during the election process, prior to that process' termination, in light of *McIntyre*, *Buckley* and *Doe*, and (2) because the court of appeals, by upholding the sanctions order without evidence to support same, deprived Trantham of property in contravention of the United States and Texas Constitutions in light of *Lindsey* and *Thompson*.

Respectfully submitted,

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APPENDIX A

[LOGO]

COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 2-06-184-CV

WILLIAM TRANTHAM — APPELLANT

V.

BRUCE ISAACKS — APPELLEE

FROM THE 158TH DISTRICT
COURT OF DENTON COUNTY

OPINION

William Trantham brings two issues in his appeal of sanctions imposed by the trial court's order of May 26, 2006. We affirm.

BACKGROUND

In February 2006, Appellant sought a declaratory judgment regarding statements he had made in a newspaper article about Appellee, the Denton County Criminal District Attorney.[1] Specifically, Appellant sought determinations of (1) his potential tort liability for defamation and

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[1] Appellant also made statements about Appellee's wife, a sitting judge in Denton County, who is not a party to this appeal. Appellee sent Appellant a cease-and-desist letter, which, according to Appellant, prompted his declaratory judgment action.

(2) Appellee's guilt in connection with an alleged violation of penal code section 36.02.[2] Appellant non-suited in April, one day before the hearing on Appellee's jurisdictional plea. Appellee filed a motion for sanctions under chapter 10 of the civil practice and remedies code. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 10.001 (Vernon 2002).[3]

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[2] Appellant also sought declaratory judgment that his comments were "true when uttered" and were "responsive to publicly posed questions" in Appellee's advertising.

[3] Sanctions can be ordered for a violation of section 10.001. TEX. CIV. PRAC. & REM. CODE ANN. § 10.002(a) (Vernon 2002). Under section 10.001, signing a pleading

> constitutes a certificate by the signatory that to the signatory's best knowledge, information, and belief, formed after reasonable inquiry:
>
> (1) the pleading or motion is not being presented for any improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) each claim, defense, or other legal contention in the pleading or motion is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) each allegation or other factual contention in the pleading or motion has evidentiary support or, for a specifically identified allegation or factual contention, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) each denial in the pleading or motion of a factual contention is warranted on the evidence or, for a specifically identified denial, is reasonably based on a lack of information or belief.

Id. § 10.001. Appellee based his sanctions claim on section 10.001(1) and (3), but also asserted that Appellee's suit was frivolous "because the relief it seeks has no support in the law" and that Appellant was subject to sanctions "for filing said pleading without legal . . . support," an allegation that falls under section 10.001(2). *Id.*

During the motion hearing, Appellant made a hearsay objection to James Robert Krause's affidavit on attorney's fees incurred by Appellee, totaling $18,159.07, because Krause was present and could have testified. The trial court admitted the affidavit. Appellee made an objection to the deposition of Appellant's former client, Paul Jaworski, which was taken in a federal case. The trial court excluded this deposition. The trial court ordered Appellant to pay Appellee $7,769.07 in sanctions.

SANCTIONS

We review a trial court's award of sanctions for an abuse of discretion. *See Koslow's v. Mackie,* 796 S.W.2d 700, 704 (Tex. 1990); *Univ. of Tex. at Arlington v. Bishop,* 997 S.W.2d 350, 357 (Tex. App. – Fort Worth 1999, pet. denied). To determine whether a trial court abused its discretion, we must decide whether the trial court acted without reference to any guiding rules or principles; in other words, we must decide whether the act was arbitrary or unreasonable. *Downer v. Aquamarine Operators, Inc.,* 701 S.W.2d 238, 241-42 (Tex. 1985), *cert. denied,* 476 U.S. 1159 (1986). Merely because a trial court may decide a matter within its discretion in a different manner than an appellate court would in a similar circumstance does not demonstrate that an abuse of discretion has occurred. *Id.* In appropriate cases, legal sufficiency is a relevant factor in assessing whether the trial court abused its discretion. *Beaumont Bank v. Buller,* 806 S.W.2d 223, 226 (Tex. 1991); *Tex. Dep't of Health v. Buckner,* 950 S.W.2d 216, 218 (Tex. App. – Fort Worth 1997, no writ).

Sufficiency Of The Evidence

Appellant challenges the sufficiency of the evidence to support the award of sanctions, claiming that there are no findings in the trial court's order regarding section 10.001(3) and that there was no evidence of sanctionable conduct.

A legal sufficiency challenge may only be sustained when: (1) the record discloses a complete absence of evidence of a vital fact; (2) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact; (3) the evidence offered to prove a vital fact is no more than a mere scintilla; or (4) the evidence establishes conclusively the opposite of a vital fact. *Uniroyal Goodrich Tire Co. v. Martinez,* 977 S.W.2d 328, 334 (Tex. 1998), *cert. denied,* 526 U.S. 1040 (1999); Robert W. Calvert, *"No Evidence" and "Insufficient Evidence" Points of Error,* 38 TEX. L. REV. 361, 362-63 (1960). In determining whether there is legally sufficient evidence to support the finding under review, we must consider evidence favorable to the finding if a reasonable factfinder could, and disregard evidence contrary to the finding unless a reasonable factfinder could not. *City of Keller v. Wilson,* 168 S.W.3d 802, 827 (Tex. 2005). Anything more than a scintilla of evidence is legally sufficient to support the finding. *Cont'l Coffee Prods. Co. v. Cazarez,* 937 S.W.2d 444, 450 (Tex. 1996); *Leitch v. Hornsby,* 935 S.W.2d 114, 118 (Tex. 1996). More than a scintilla of evidence exists if the evidence furnishes some reasonable basis for differing conclusions by reasonable minds about the existence of a vital fact. *Rocor Int'l, Inc. v. Nat'l Union Fire Ins. Co.,* 77 S.W.3d 253, 262 (Tex. 2002).

Claims Under The Declaratory Judgments Act

Appellant sought a declaratory judgment. The Declaratory Judgments Act (DJA) is a remedial statute designed "to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." *See* TEX. CIV. PRAC. & REM. CODE ANN. § 37.002(b). However, a potential defendant may not use a declaratory judgment action to determine potential tort liability, because the DJA was not intended to deprive a potential tort plaintiff of the right to decide whether, when, and where to sue. *See Abor v. Black,* 695 S.W.2d 564, 566-67 (Tex. 1985); *Averitt v. PriceWaterhouseCoopers L.L.P.,* 89 S.W.3d 330, 333-34 (Tex. App. – Fort Worth 2002, no pet.). Nor can a civil court issue a declaratory judgment to "render naked declarations of rights, status or other legal relationships arising under a penal statute." *See State v. Morales,* 869 S.W.2d 941, 947 (Tex. 1994); *see also Briar Voluntary Fire Dept. v. Anderson,* No. 02-04-00258-CV, 2005 WL 1475409, at *2 (Tex. App. – Fort Worth June 23, 2005, no pet.) (mem. op.) (stating that penal statutes should be construed by courts exercising criminal jurisdiction).

To determine if a pleading was groundless, that is, filed for an improper purpose, the trial court must objectively ask whether the party and counsel made a reasonable inquiry into the legal and factual basis of the claim at the time the suit was filed. *See Loeffler v. Lytle Indep. Sch. Dist.,* No. 04-04-00443-CV, 2006 WL 1683790, at *14 (Tex. App. – San Antonio June 21, 2006, pet. denied). The trial court found that Appellant's suit was filed for the improper purpose of harassing Appellee, that Appellant's "claims and assertions . . . were not warranted by existing law or by non-frivolous arguments for the extension, modification, or

reversal of existing law or the establishment of new law," and that a reasonable sanction was necessary to deter repetition of that conduct. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 10.001(1), (2); 10.004(b).

Among the twelve bases listed by the trial court for its finding of improper purpose were the newspaper article that "contained numerous vicious political and personal attacks by [Appellant] on [Appellee]," Appellant's own testimony that the continuing political controversy was both the article's genesis and the reason for filing the original declaratory action, and that the amended declaratory action "served only to republish the political and personal attacks contained in the [a]rticle" and was "an exercise in political gamesmanship improperly invoking judicial involvement as a mechanism in an on-going political controversy." *See id.* § 10.001(1). The trial court also found that Appellant's amended declaratory action sought a determination that "his political and personal attacks upon [Appellee] ' . . . [were] factual and not libelous . . . '."

Based on a comprehensive review of the record, there is legally sufficient evidence to support the trial court's findings pertaining to improper purpose. *See City of Keller,* 168 S.W.3d at 827; *Uniroyal,* 977 S.W.2d at 334. In the article Appellant attached to his amended pleading, he is quoted as saying, "Under [Appellee], our narcotics task force has been more interested in burglarizing houses to keep their operation going than they are in keeping drugs off the streets," and that "Under [Appellee], law enforcement has almost come to a standstill in Denton County." Appellant testified that after receiving Appellee's cease-and-desist letter, he attached a copy of the article to his amended pleading. In his amended pleading, Appellant

reiterated many of the same allegations that he made in the article.

The bases for the trial court's decision that Appellant's claims were not warranted by existing law or by non-frivolous arguments for the extension, modification, or reversal of existing law or the establishment of new law were that:

> • There existed no justiciable controversy between [Appellant] and [Appellee] arising from the matters asserted by [Appellee] in his amended declaratory judgment action;
>
> • [Appellant] did not allege grounds supporting the assertion of a cause of action against [Appellee] in his amended declaratory judgment action; and
>
> • [Appellant]'s amended declaratory judgment action was completely without merit, spurious and brought in bad faith.

See TEX. CIV. PRAC. & REM. CODE ANN. § 10.001(2).

The trial court did not err by determining that Appellant violated section 10.001(1) by filing a pleading for an improper purpose, because declaratory judgment was an improper vehicle for determining Appellee's potential tort and criminal liability. *See Morales,* 869 S.W.2d at 947; *Averitt,* 89 S.W.3d at 333-334. Applying the same reasoning, the trial court did not err in concluding that there was no basis under existing law for Appellant's claims and that Appellant also violated section 10.001(2). *See* TEX. CIV. PRAC. & REM. CODE ANN. § 10.001(2).

Section 10.004 states that a "court that determines that a person has signed a pleading . . . in violation of

Section 10.001 may impose a sanction on the person, a party represented by the person, or both," limited to what is sufficient to deter repetition of the conduct. *Id.* § 10.004(a), (b). That sanction may include an order "to pay to the other party the amount of the reasonable expenses incurred by the other party because of the filing of the pleading or motion, including reasonable attorney's fees." *Id.* § 10.004(c)(3); *Bishop,* 997 S.W.2d at 356 (holding that sanctions were appropriate on other grounds even though university, as a represented party, could not be sanctioned under 10.001(2) for advancing frivolous legal arguments). Upon determining that section 10.001 had been violated, the trial court had the discretion to impose sanctions. TEX. CIV. PRAC. & REM. CODE § 10.004(a). Because the trial court did not abuse its discretion by imposing sanctions on Appellant under either section 10.001(1) or (2), we need not address Appellant's no evidence contention under section 10.001(3). *See* TEX. R. APP. P. 47.1.

Evidence Objections

Appellant asserts that the only evidence of attorney's fees offered by Appellee was Krause's affidavit, that the affidavit was improperly admitted hearsay because Krause was present and able to testify, and that its admission caused the rendition of an improper judgment of sanctions because without it, the evidence would not support an award of attorney's fees to Appellee. Appellant also complains that Jaworski's deposition was improperly excluded on Appellee's hearsay objection.

A trial court's rulings in admitting or excluding evidence are reviewable under an abuse of discretion

standard. *Nat'l Liab. & Fire Ins. Co. v. Allen*, 15 S.W.3d 525, 527 (Tex. 2000). Properly authenticated records of regularly conducted business activity can be admitted into evidence as an exception to the hearsay rule. TEX. R. EVID. 803(6). The foundation for admission of a business record may be established by testimony or by affidavit. TEX. R. EVID. 902(10). For purposes of rule 803, the availability of the declarant is immaterial. TEX. R. EVID. 803. Therefore, Krause's presence or absence at the hearing was irrelevant. *Id.* We overrule this portion of Appellant's first issue.

Appellant sought admission of the Jaworski deposition, which was taken in an employment lawsuit filed by Appellant in federal court. Appellee objected, stating that because Appellant had the opportunity to subpoena Jaworski to testify but did not, Appellant should not have the opportunity to use a deposition taken in another matter in which Appellee was not present. The trial court excluded the deposition.

Under rule 801(e), a statement is not hearsay if it is a deposition taken in the same civil proceeding. TEX. R. EVID. 801(e). This was not the same proceeding; therefore, the trial court did not abuse its discretion in the exclusion of this evidence on this ground. *See id.*

Appellant now argues that he offered this deposition testimony as evidence of Appellant's state of mind and to refute claims of lack of due diligence. At the hearing, Appellant's attorney asked him, "As a result of those conversations [with Jaworski], did you form an opinion as to whether or not – for lack of a better term – bribery actually took place?" Though Appellant's opinion at the time would be within the exception to the hearsay rule provided by rule 803(3), the deposition's contents were

inadmissible hearsay because the statements contained within it pertain to *Jaworski's* statements and state of mind rather than to Appellant's. *See* TEX. R. EVID. 801, 803(3). Therefore, the trial court did not abuse its discretion by excluding this evidence. We overrule Appellant's first issue.

Declaratory Judgments Act

In his second issue, Appellant argues that the trial court erred by sanctioning him because a good faith basis for the pursuit of protection for core political speech *should* be allowed under the DJA. As discussed above, there was no basis in law for Appellant's particular claims under the DJA. *See Morales,* 869 S.W.2d at 947; *Averitt,* 89 S.W.3d at 333-34. Because the DJA is inappropriate for a determination of potential tort liability, *Smith v. Holley,* which Appellant cites for his "request for comments" and consent defenses, does not apply because Appellant has not yet been sued for defamation.[4] 827 S.W.2d 433 (Tex. App. – San Antonio 1992, writ denied); *see Averitt,* 89 S.W.3d at 333-34. We hold that the trial court did not err by sanctioning Appellant, and we overrule Appellant's second issue.

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[4] The remaining cases cited by Appellant to support his political speech claims, *McIntyre v. Ohio Elections Comm'n,* 514 U.S. 334, 115 S. Ct. 1511 (1995), and *Doe v. State,* 112 S.W.3d 532 (Tex. Crim. App. 2003), involve state action burdening free speech, an issue not implicated here. *See McIntyre,* 514 U.S. at 347, 115 S. Ct. at 1519 (addressing law burdening core political speech); *Doe,* 112 S.W.3d at 534 (holding section 255.001 of Texas Election Code facially unconstitutional).

CONCLUSION

Having overruled both of Appellant's issues, we affirm the trial court's order imposing sanctions.

/s/ Dixon W. Holman
DIXON W. HOLMAN
JUSTICE

PANEL B: LIVINGSTON, DAUPHINOT, and HOLMAN, JJ.

DELIVERED: January 25, 2007

APPENDIX B

[LOGO]

COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-06-00184-CV

WILLIAM TRANTHAM — APPELLANT

V.

BRUCE ISAACKS — APPELLEE

FROM THE 158TH DISTRICT
COURT OF DENTON COUNTY

ORDER

We have considered "Appellant's Motion For Rehearing."

It is the opinion of the court that the motion for rehearing should be and is hereby denied and that the opinion and judgment of January 25, 2007 stand unchanged.

The clerk of this court is directed to transmit a copy of the order to the attorneys of record.

DATED March 1, 2007.

/s/ Dixon W. Holman
DIXON W. HOLMAN
JUSTICE

PANEL B: LIVINGSTON, DAUPHINOT, and HOLMAN, JJ.

APPENDIX C

NO. 2006-20061-158

WILLIAM TRANTHAM	*	IN THE DISTRICT COURT OF
VS.	*	DENTON COUNTY, TEXAS
BRUCE ISAACKS and VICKY ISAACKS	*	158TH JUDICIAL DISTRICT

ORDER GRANTING DEFENDANT
BRUCE ISAACKS'S MOTION FOR SANCTIONS

On the 25th day of May, 2006 came on to be heard Defendant Bruce Isaacks' Motion for Sanctions. The Movant appeared by counsel. The Respondent, William Trantham, appeared in person and by counsel.

After considering the motion, the evidence presented at the hearing and argument of counsel the Court finds that –

- The motion should be granted;
- Respondent's Amended Suit for Declaratory Relief was presented and filed for the improper purpose of harassing the Movant;
- The claims and assertions of Respondent in his Amended Suit for Declaratory Relief were not warranted by existing law or by non-frivolous arguments for the extension, modification, or reversal of existing law or the establishment of new law;
- A reasonable sanction necessary to deter repetition of the conduct or comparable conduct of others similarly situated would be payment of reasonable expenses including costs and attorney fees incurred by the Movant by the Respondent;

- Reasonable costs incurred by Movant and to be paid by the Respondent are $269.07; and
- Reasonable attorney fees incurred by Movant and to be paid by the Respondent are $7,500.00.

The basis for the decision of the court that Respondent's Amended Suit for Declaratory Relief was filed and presented for the improper purpose of harassing the Movant is as follows:

- The New Connection, a local newspaper in Denton County, Texas, published on February 20, 2006 an article containing an interview with Respondent (the "Article").
- The Article contained numerous vicious political and personal attacks by Respondent on the Movant;
- The Respondent filed his original declaratory action four days after publication of the Article;
- At the time the Respondent filed his original declaratory action he had not received a letter dated February 23, 2006 from counsel for Movant demanding that Respondent cease and desist from certain behavior (the "Cease and Desist Letter");
- The Respondent testified that continuing political controversy was the genesis of the Article and the need to file the original declaratory judgment action;
- The Respondent testified that he filed his amended declaratory judgment action in response to the Cease and Desist Letter;

- Respondent's amended declaratory action seeks determination that his political and personal attacks upon Movant " . . . to be factual and not libelous . . . ";
- Respondent's amended declaratory action seeks determination that " . . . all comments were responsive to publicly posed questions by the defendant Bruce Isaacks and are fairly and accurately responsive to his [Bruce Issacks] advertising and public controversy . . . ";
- Respondent's amended declaratory action served only to republish the political and personal attacks contained in the Article;
- Respondent testified that the reason why he nonsuited his declaratory judgment action on April 26, 2005, the day before a hearing was scheduled on Movant's Plea to the Jurisdiction, was to allow Denton County to seek an Texas Attorney General's Opinion on issues unrelated to the matters he had asserted in his amended declaratory judgment action against the Movant;
- Respondent's purpose in filing his amended declaratory action was an attempt to cloak his political and personal attacks with a judicial privilege;
- Respondent's amended declaratory action was an exercise in political gamesmanship improperly invoking judicial involvement as a mechanism in an on-going political controversy.

The basis for the decision of the court that the claims and assertions of Respondent in his Amended Suit for Declaratory Relief Respondent's Amended Suit for Declaratory Relief were not warranted by existing law or by non-frivolous arguments for the extension, modification, or

reversal of existing law or the establishment of new law is as follows:

- There existed no justiciable controversy between the Respondent and Movant arising from the matters asserted by the Respondent in his amended declaratory judgment action;
- The Respondent did not allege grounds supporting the assertion of a cause of action against the Movant arising from the matters asserted by the Respondent in his amended declaratory judgment action; and
- Respondent's amended declaratory judgment action was completely without merit, spurious and brought in bad faith.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that Respondent's Amended Suit for Declaratory Relief was filed and presented for the improper purpose of harassing the Movant.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the claims and assertions of Respondent in his Amended Suit for Declaratory Relief were not warranted by existing law or by non-frivolous arguments for the extension, modification, or reversal of existing law or the establishment of new law.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that BRUCE ISAACKS have judgment against WILLIAM TRANTHAM for the sum of $7,769.07 as sanctions in accordance with Chapter 10 of the Civil Practices and Remedies Code together with post judgment interest at the prescribed rate and with all costs of court in this behalf expended. BRUCE ISSACKS is allowed such

writs and processes as may be necessary in the enforcement and collection of this judgment.

Signed this the 26th day of May, 2006.

(COPY)
KEN CURRY,
JUDGE PRESIDING

APPENDIX D

TRANTHAM/SANCTIONS

DATE: 5/25/2007

[LOGO]
02 1A $00.260
0004392386 MAY 25, 2007

[LOGO] OFFICIAL NOTICE FROM
SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711-2248

RE: Case No. 07-0302
COA #: 02-06-900184-CV
STYLE: WILLIAM TRANTHAM
v. BRUCE ISAACKS

Today the Supreme Court of Texas denied the petition for review in the above-referenced case.

MAIL TO: MR. CHRIS RAESZ
306 NORTH CARROLL BLVD
DENTON TX 76201